



Steve Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Structural Pest Control and Pesticides Division

James W. Burnette, Jr.
Director

December 4, 2015

Mr. James J. Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 7101 M
Washington, DC 20460

Jim:

Many of us have been following the discussion taking place at PREP this week concerning the revisions to the WPS, first with great interest and now, learning of EPA's current interpretation of parts of the standard---with even greater concern.

Our concern stems from discussion of the requirements for the newly inserted no entry Application Exclusion Zone (AEZ) of up to 100 feet surrounding application equipment and EPA's insistence/interpretation that no one can be in this area--- not a person in a car, not a person in a house across the road from a field, not someone wanting to stop the application by merely standing/parking their vehicle at the edge of the farmer's field and refusing to leave.

Since the inception of the Worker Protection Standards, which North Carolina Pesticide Board saw fit to adopt by reference as our State's standard, the intent and appropriate focus of the WPS has been prescribing measures to be taken by employers and their employees to protect workers and handlers engaged in the production of agricultural

Structural Pest Control and Pesticides Division
Structural Pest Control Section • Phone: (919) 733-6100 • FAX: (919) 733-0633
Pesticide Section • (919) 733-3556 • Fax (919) 733-9796
1090 Mail Service Center, Raleigh, North Carolina 27699-1090
www.ncagr.com/str-pest/

An Equal Opportunity Affirmative Action Employer

ED_002917_00003266-00001

plants. This has included prohibiting entry into treated areas during applications. Apparently, with the insertion of the AEZ, EPA moved far beyond this intent to prohibit not only entry during applications into "other areas"—which may include areas well beyond the property of the agricultural establishment; but now the Standard will allow persons not even in the employ of an agricultural establishment, nor having any association with the agricultural establishment—to stop critical pest management practices on that establishment, simply by refusing to leave the AEZ.

Don't get us wrong, no one suggests that any person should be exposed to pesticides, but given that with the AEZ moves the WPS from the agricultural establishment and subjects growers to unreasonable notification and performance burdens, we firmly believe this constitutes a "taking" of the growers' land. They will not be able to spray their fields if there is a house within the AEZ even if the wind is blowing away, windows closed etc.—and what if the occupants refuse to leave the premises—a very real possibility? Growers' operations can now effectively be held hostage by persons whose only interest may be to prevent pesticides from being applied.

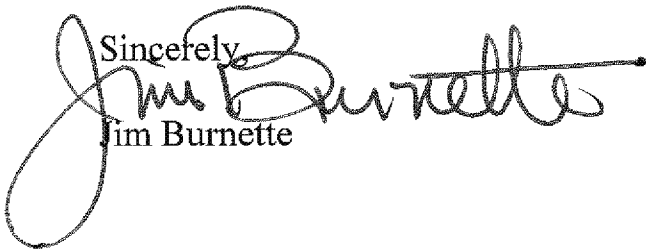
One of EPA's recommended best practices under the pollinator protection strategy is that consider applying pesticides in the evenings and when temperatures are below 55 degrees—when pollinators are not active. If a grower does this, is that grower now expected under the WPS to go to a neighboring home say, at midnight, and inform the occupants that they need to leave their residence so he can spray? Again, what if they refuse? Or, by telling them this, does the grower raise more concerns in the minds of the occupants—if I have to leave my home because of the spraying, what risks am I facing when I return? Does this seem practical; reasonable; logical?

We are equally dismayed that this AEZ was not presented as part the proposed regulations and thus was not something that the States or others were given opportunity to consider and comment on. Instead we were only asked to comment on buffer zones concept, which it was our understanding, would only be applicable up to the boundaries of the agricultural establishment, and on which we did submit comments. For EPA to have made such substantive change to the original proposal as published for public comment, without providing additional comment opportunities runs afoul of the productive performance partnerships between the SLA's and the Agency.

As I have stated, there are two major issues with the Agency's current interpretation—and ones for which we fully expect that the Agency could be challenged: 1) The Agency did not follow established and appropriate re-publication and comment procedures prior to including such a significant change; and 2) The unreasonable burdens and economic impacts upon agricultural operations and employers have not been appropriately considered or addressed, and thus, this rule amounts to an "unlawful taking."

We value our longstanding partnership with EPA, however we are greatly disappointed in the position EPA has taken on the AEZ issue, and would urge the Agency to reconsider its interpretation and provide sufficient opportunity for public comment before implementing these requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Burnette". The signature is fluid and cursive, with a large loop at the beginning and a horizontal line extending to the right.

Cc:

William Jordan, Deputy Director, EPA Office of Pesticide Programs
Jordan.william@epa.gov

Chuck Moses, AAPCO President
cmoses@agri.nv.gov

Carey Guigere, SFIREG Chair
Cary.giguere@state.vt.us

Richard Corbett, EPA Region 4 Project Officer
Corbett.Richard@epa.gov

Joe Reardon, Assistant Commissioner
joe.reardon@ncagr.gov